

**CYNTHIA D. JONES**  
Claimant

**OTTAWA RETIREMENT SERVICES, INC.**  
Respondent

**AMERICAN COMPENSATION INSURANCE  
COMPANY**  
Insurance Carrier

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## ORDER

## ISSUES

- ## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant alleges accidental injury on May 16, 1999, when, after assisting a patient in the Alzheimer's unit of respondent's retirement home, she slipped and fell landing on her knees and elbows. Claimant contacted her supervisor, Tangela Foster, and advised her of the accident. Ms. Foster and Debbie Meitchen, a fellow employee, came from a

separate unit to examine claimant. Claimant had earlier told her coworker, Sandra Akin, of the fall. However, there were no witnesses to the actual fall.

Ms. Foster denies being told of the fall. At one point in her deposition, she testified that she heard about the fall from a coworker approximately a week after the alleged accident. At another point in her deposition, she testified that she only heard about the fall three weeks prior to the deposition which occurred on October 4, 1999, nearly five months after the alleged date of accident.

Ms. Meitchen testified that she was with Ms. Foster the entire time she was caring for claimant, and that claimant never mentioned a fall. Ms. Akin, claimant's coworker, was not deposed in this matter.

The Administrative Law Judge had the opportunity to view the live testimony of both claimant and Ms. Meitchen. The deposition testimony of Ms. Foster was provided at a later time. The Appeals Board finds the testimony of Ms. Foster to be somewhat suspect. Her testimony conflicts regarding when she was advised that claimant had alleged a fall. At one point, she acknowledged knowing of the fall within a week of the incident. At another point in her testimony, she discussed not hearing about the fall until several months later, just prior to her testifying in October 1999. This conflicting testimony convinces this Appeals Board member that Ms. Foster's memory, which she acknowledges was not very clear regarding the date in question, cannot be trusted for purposes of this litigation. Therefore, the dispute must be resolved between the testimony of claimant and Ms. Meitchen.

In that regard, the Administrative Law Judge had the opportunity to view both witnesses, as they testified in person at the preliminary hearing. The Administrative Law Judge considered the testimony of claimant to be the more credible and persuasive, and adopted claimant's version of the events. The Administrative Law Judge further found it significant, as does the Appeals Board, that the medical records contained within the files provide a consistent history that claimant fell on the date of accident, suffering injury to her elbow. The Appeals Board, in considering the Administrative Law Judge's opportunity to view live testimony, gives some deference to the Administrative Law Judge's opportunity to assess the credibility of the witnesses. The Appeals Board concludes the Administrative Law Judge's finding, that claimant has proven accidental injury and timely notice, should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated October 8, 1999, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

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BOARD MEMBER

c:     Derek R. Chappell, Ottawa, KS  
       Billy E. Newman, Topeka, KS  
       Julie A. N. Sample, Administrative Law Judge  
       Philip S. Harness, Director